

SIEMENS

PATENT
Attorney Docket No. 2001P13794WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	D. Fischer, et al.)	Group Art Unit:	2121
)		
Serial No.:	10/763,786)	Examiner:	Chang, Sunray
)		
Filed:	01/23/2004)	Confirmation No.:	7919

Title: PROCESS CONTROL SYSTEM WITH A CHARGING FUNCTION

Mail Stop Appeal Brief
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF UNDER 37 CFR 41.41

Sir:

Pursuant to 37 C.F.R. § 41.41, this Reply Brief is responsive to the Examiner's Answer mailed 16 October 2008 in which the Examiner raised new points of argument. This is not a substitute for the Appeal Brief. Any ground for rejection in the Examiner's Answer that is not refuted herein is considered by Appellant to have been sufficiently argued in the Appeal Brief, such that no further comment is needed herein. Arguments herein focus on errors and new arguments presented in the Examiner's Answer.

The Examiner's substantive response to Appellants' argument, beginning on page 9 of the Answer, is a failed attempt to use Appellant's own disclosure as a basis for the Examiner's strained interpretation and application of the Mori reference in the combination of Papadopoulos in view of Mori to reject claims 1 and 14 under Section 103.

Appellants have already made of record that the Examiner attempted to find prior art which discloses a processor unit adapted to determine a payment figure in order to form a combination under Section 103 and, to this end, the rejection incorrectly asserts that the Mori reference "teaches a processor adapted to determine a payment figure ..." See page 2 of the Final Office Action. Error in the rejection is due to an incorrect application of Appellant's phrase "determining a payment figure" in the specification. In this regard, at page 9 of the Examiner's Answer (see Section (10) "Response to Argument") the Examiner now argues that the term "determining payment figure" should be read broadly (instead of only as "calculating payment" or "computing payment"), however, Appellants see no relation between what is actually stated in the patent application specification and the Examiner's conclusion. The Examiner concludes that, somehow, part or all of the following excerpt from the detailed description (page 2, lines 20-30) supports his contention that the terms of the claims 1 and 14 can be read so broadly as to cover that part of the Mori reference which is taken, piecemeal, and combined with Papadopoulos:

"The invention in this case stems from the idea of *determining a payment figure*, for example license fees to be paid by a customer, *that depend on the actual use of the process control system*. This is a way of guaranteeing that the customer--apart from any fixed basic price that may have been agreed, for example for the supplied hardware components of the process control system--must in practice only pay (extra) for those functions of process control system that he is really using [Emphasis Added]."

It is not seen how the Examiner's reference to this passage in Appellants' specification gives any basis for arguing that the Mori reference discloses *determining a payment figure ... that depend[s] on the actual use of the process control system*. The argument continuing on to page 10 of the Answer correctly assumes (from Appellants' specification) that there may be a relationship between "payment figure" and "actual use", but none of this provides any logical

connection to reach the unfounded conclusion that, as stated in the second full paragraph at page 10 of the Answer:

The limitation, "a processor unit adapted to determine a payment figure from operations", which is so broad that [sic] can also be read on different embodiments of **Mori** reference [Emphasis Original].

The paragraph continues by providing an example of how the use history storage 131 of Mori can be revised to raise the limit of the cumulative charges stored in the use history storage 131 by instructions supplied through the I/O processing portion 132 shown in Fig 2 of Mori. However, this is taken out of context without providing details to make clear that Mori does not provide a processor unit to determine a payment figure. According to Mori, the program use history (not a history of charges) is accessible to the proprietor of the programs (col. 3, lines 25-29). The proprietor obtains information necessary for charging the user for the exact amount of use of his program. (col. 3, lines 29-31). A storage portion 122 stores data of the charge payable by the user as well as the currency. See col. 3, lines 43-46. Note that the storage portion 122 is connected to I/O 132 to receive such input from, e.g., the proprietor, via an account portion. As stated at col. 3, lines 63 ff, with the account portion 53 connected through the I/O processing unit 132, information on the charge payable by the user can be stored in the "use history storage 131" as a predetermined limit on the amount of cumulative charges of a user. However, this does not imply that the system of Mori determines the charges. At best, information based on cumulative charges is provided to the "use history storage" (e.g., use may be based on time), such that a time limit can be established which corresponds to the maximum charge permitted.

As noted by the Examiner, as stated at col. 4, lines 9-15, the proprietor may provide instructions such that the limit on the charge payable by the user may be revised in the use history storage 131. It is especially noteworthy that in this regard the Mori reference refers to the use history storage 131 and not the payable charge storage 122 in order to raise a limit. This implies that the limit entered into the "use history storage" 131 is based on use (e.g., time) rather than on charges.

So, even if Mori were to have discloses raising a limit of use (which may indirectly relate to charges), this is not the same as providing a processor unit that "determine[s] a payment

figure" per claim 1 and "determining a payment figure by a processor unit using recorded data ..." per claim 14. The Examiner's citation of additional text still does not provide disclosure of that which is claimed.

The Examiner continues to misinterpret the language of claim 1 "adapted to determine" as though it might mean that subject matter not being positively claimed might determine the payment figure, i.e., outside the scope of the claim. In this regard, the Answer now cites MPEP 2106 with regard to use of the term "adapted to" in claim 1. First, it is noted that claim 14 does not use such language with respect to "determining a payment figure" and therefore the Examiner cannot rely on such argument to reject claim 14. Further, the argument is incorrect as to claim 1. While the MPEP does state that use of the term "adapted to" may raise a question as to a limiting effect, Appellants contend that in the context of claim 1 this is not at all the case.

Rather, claim 1 requires structure "to determine a payment figure" and in this context the term "adapted to" has the same meaning as "configured to determine a payment figure." Mere use of the word "adapted" is not forbidden. It would be error to over-generalize when the MPEP expressly states that the term "may" raise a question. But the Examiner continues to mischaracterize the language of claim 1 as though it reads that the processor is connected to something else which determines a payment figure.

While the Examiner argues that In re Morris enables one to read the claims according to their broadest reasonable interpretation, this does not permit ignoring select words of the claims. That is, there is no basis to contend that the claimed processor unit is not required to perform the very function ascribed to it, i.e., determine a payment figure. There is no support for arguing that the quoted claim language in its entirety can be read upon anything outside of a processor unit, i.e., a processor cannot be read upon proprietors or operators such that it would be considered "adapted to operate with" external activities to perform the very function which applicants require that the processor unit itself must perform.

The plain language of claim 1 requires that the processor determines the payment figure. Thus there is no question as to the limiting effect of the claim language. The rejection must fail and all of the claims should be passed to issuance.

Conclusion

In summary, the argument presented in the Examiner's Answer fails to identify the requisite support to sustain any prior art rejection. The new points of argument are without support just as the arguments presented in the final rejection are without basis. In view of the deficiencies identified in the Answer brief, Appellants again respectfully submit that the rejections are in error. The Board is therefore respectfully requested to reverse the final rejection of the Examiner and to remand the application to the Examiner with instructions to allow all of the pending claims.

Please grant any extensions of time required to enter this paper. Please charge any appropriate fees due in connection with this paper or credit any overpayments to Deposit Acct. No. 19-2179.

Respectfully submitted,

Dated: Nov. 14, 2008

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